

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PUBLIC HEARING
amendment of ARM 17.38.101,)	ON PROPOSED AMENDMENT AND
17.38.201A, 17.38.202,)	ADOPTION
17.38.203, 17.38.206,)	
17.38.208, 17.38.216,)	
17.38.229, 17.38.234,)	(PUBLIC WATER SUPPLY AND
17.38.239, 17.38.249,)	WASTEWATER SYSTEM
17.38.302, and the adoption)	REQUIREMENTS)
of new rule I pertaining to)	
ground water under the direct)	
influence of surface water)	
determinations		

TO: All Concerned Persons

1. On April 30, 2003 at 10:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., April 21, 2003, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The Board is proposing amendments to Administrative Rules of Montana (ARM) Title 17, chapter 38, subchapters 1, 2, and 3 to update existing rules regarding public water supply and wastewater systems by making the rules consistent with the public water supply laws and by incorporating by reference the most recent applicable sections of the Code of Federal Regulations. These proposed amendments are necessary to allow the Board to enforce the public water supply laws and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana legislature has been for state agencies to retain primacy over environmental and public health programs.

New federal regulations that the Board is proposing to adopt by reference include the radiological maximum

contaminant levels, the recycle provisions, siting requirements, and prohibition on the use of lead pipes, solder, and flux.

Rule amendments include clarifications and updates to the rules and to definitions for existing rules, a new rule to accommodate new federal requirements, and clarifications of federal requirements.

4. The Board anticipates that it will have to adopt the requirements of many new federal regulations on a regular basis in the coming years. The federal government requires Montana's public water supply rules to be at least as stringent as the federal regulations. Montana statutes, found at 75-6-116, MCA, prohibit the Board from adopting rules that are more stringent than the comparable federal regulations unless certain statutory procedures are followed.

Therefore, the Board is proposing to adopt the rules by reference, as is authorized by 2-4-307, MCA.

5. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) and (2) remain the same.

(3) As used in this rule, the following definitions apply in addition to those in 75-6-102, MCA.

(a) through (g) remain the same.

(h) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for ~~a period of at least~~ any 60 or more days in a calendar year.

(i) and (ii) remain the same.

(4) Before commencing or continuing the construction, alteration, ~~or~~ extension, or operation of a public water supply system or wastewater system, the applicant shall submit a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and written approval. Two sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or wastewater system consistent with the approved design report, plans, and specifications. Failure of the system to operate according to the approved plans and specifications or the department's conditions of approval is an alteration that requires resubmittal of a design report, plans, and specifications for department approval.

(a) through (8) remain the same.

~~(9) Prior to commencing A person may not commence or continue the use operation of a public water supply or wastewater system, or any portion of a new public such system, prior to the applicant shall certify certifying by letter to the department or a delegated division of local government that the system, or portion of the system constructed, altered, or extended to that date, was built completed in accordance with approved plans and specifications approved by the department. For a system or any portion of a system designed by a professional engineer, the engineer shall sign and submit the certification letter to the department or a delegated division of local government. As-builts for the new system, or portion of the new system constructed to that date, must be submitted to the department within 90 days after the system has been placed into use. For new systems designed by a professional engineer, a professional engineer shall submit the certification letter and as-builts. Within 90 days after construction has been completed upon an existing public water supply system or wastewater system, or upon an extension of or addition to such a system, the applicant shall certify to the department or a delegated division of local government that the construction, alteration, or extension was completed in accordance with the plans and specifications approved by the department. For systems designed by a professional engineer, the applicant shall submit a professional engineer's certification that the construction, alteration or extension was completed in accordance with the plans and specifications approved by the department. This certification shall be accompanied by a complete set of "as built" drawings signed by the applicant or, for systems designed by an engineer, signed by the, professional engineer, and an operation and maintenance manual if applicable.~~

(10) Within 90 days after the completion of construction, alteration, or extension of a public water supply or wastewater system, or any portion of such system, a complete set of certified "as-built" drawings must be signed and submitted to the department or a delegated division of local government. The department may require that the "as-built" submittal be accompanied by an operation and maintenance manual. For a system or any portion of a system designed by a professional engineer, the engineer shall sign and submit the certified "as-built" drawings to the department or a delegated division of local government.

(10) through (12) remain the same, but are renumbered (11) through (13).

~~(13)~~(14) The board hereby adopts and incorporates by reference the following publications:

(a) Department of Environmental Quality Circular DEQ-1, 1999 edition, which sets forth the requirements for the design and preparation of plans and specifications for public water supply systems-i

(b) Department of Environmental Quality Circular DEQ-2, 1999 edition, which sets forth the requirements for the design and preparation of plans and specifications for sewage works-;

(c) Department of Environmental Quality Circular DEQ-3, 1999 edition, which sets forth minimum design standards for small water systems-;

(d) Department of Environmental Quality Circular DEQ-4, 2002 edition, which sets forth standards for subsurface wastewater treatment systems-; and

(e) 40 CFR 141.5, which sets forth siting requirements for public water supply components.

(14) remains the same, but is renumbered (15).

AUTH: 75-6-103, MCA

IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: The proposed amendment to (3)(h) is necessary to clarify the definition of a "public water supply." Senate Bill 147 of the 2001 Montana legislature ("Senate Bill 147") modified the statute, and this proposed amendment is necessary to keep the rules parallel with the statutes.

The proposed amendment to (4) is necessary to clarify that each day a public water supply or wastewater system is constructed, altered, extended, or operated without proper department review and approval constitutes a separate day of violation. The statute was modified, as amended by Senate Bill 147, to clarify the same concern, and keeps the rules parallel with the statutes.

The proposed amendment to (9) is necessary to clarify that each day a person operates a public water supply or wastewater system without certifying to the department that the system was completed in accordance with plans and inspections reviewed and approved by the department constitutes a separate day of violation. The statute was modified, as amended by Senate Bill 147, to clarify the same concern, and keeps the rules parallel with the statutes. The proposed amendment is also necessary to clarify who must submit the certified letter to the department.

The proposed addition of new (10) is necessary to clarify when the certified "as-built" drawings must be submitted to the department and by whom. The proposed amendment also simplifies the reading of the rule.

The proposed addition of (14)(e) is necessary to adopt by reference the federal requirement that public water supply or wastewater facilities, other than intakes, not be located within an area of "significant risk." The intent is to protect the integrity and long-term feasibility of public water supply or wastewater systems by avoiding construction in

areas that may be susceptible to catastrophic acts of nature. The language is such that the USEPA will not seek to override land use decisions made at the state or local government levels.

17.38.201A INCORPORATION BY REFERENCE--PUBLICATION DATES AND AVAILABILITY OF REFERENCED DOCUMENTS (1) Unless expressly provided otherwise, in this subchapter where the board has:

(a) adopted and incorporated by reference a federal regulation, the reference is to the July 1, ~~1999~~ 2001, edition of the Code of Federal Regulations (CFR); and

(b) referred to a section of the Montana Code Annotated (MCA), the reference is to the ~~1999~~ 2001 edition of the MCA.

(c) through (4) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: These proposed amendments are necessary to update the rule to adopt by reference the July 1, 2001, edition of the Code of Federal Regulations (CFR) and all the applicable changes made since the 1999 edition. The CFR changes are described below in the rules as specific CFR sections are incorporated. The proposed amendments are also necessary to allow the department to enforce the public water supply statutes and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana legislature has been for state agencies to retain primacy over environmental and public health programs.

17.38.202 DEFINITIONS In this subchapter, the following terms have the meanings indicated below and must be used in conjunction with and supplemental to those definitions contained in 75-6-102, MCA. In addition, the board hereby adopts and incorporates by reference the definitions in 40 CFR 141.2, except for the following terms: "~~person~~," "~~public water supply system~~" ~~or~~ "~~(PWS)~~," "~~ground water under the direct influence of surface water (GWUDISW)~~," "~~special irrigation district~~," and "state." The terms "~~person~~," and "~~public water supply system~~," "~~ground water under the direct influence of surface water~~," and "state," as used in the portions of 40 CFR Parts 141 and 142 adopted by reference in this subchapter, have the meanings of the terms "~~person~~" and "~~public water supply system~~," respectively, as defined below. The term "~~state~~," as used in the portions of 40 CFR Parts 141 and 142 adopted by reference in this subchapter, has the meaning of the term "state" as defined below.

(1) and (2) remain the same.

(3) "Ground water under the direct influence of surface water (GWUDISW)" has the same meaning as adopted and

incorporated by reference from 40 CFR 141.2, except that GWUDISW determinations for regulatory compliance purposes are made in accordance with the Department of Environmental Quality Circular PWS-5, Ground Water Under the Direct Influence of Surface Water, 2002 edition, as adopted and incorporated by reference in [New Rule I].

~~(3)~~ (4) "Person" means ~~any~~ an individual, ~~corporation, association, firm, partnership, municipality, or political subdivision of the state or a federal agency company,~~ association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.

~~(4)~~ (5) "Public water supply system (PWS)" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for ~~a period of at least~~ any 60 or more days in a calendar year.

~~(5)~~ (6) "State," as used in the portions of 40 CFR Parts 141 and 142 ~~adopted by reference and incorporated by reference~~ in this subchapter, means the Montana department of environmental quality with respect to regulation of public water supply and wastewater systems for compliance with this subchapter, and the Montana department of public health and human services with respect to certification of laboratories for performing water sample analyses for public water supply systems as required in 40 CFR Part 141.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to (3) is necessary to clarify the definition of "ground water under the direct influence of surface water" or "GWUDISW." The department is establishing a process under which a final GWUDISW determination is made by the department. That process is adopted in proposed New Rule I, which would adopt by reference Department of Environmental Quality Circular PWS-5, Ground Water Under the Direct Influence of Surface Water, 2002 edition. Although this document was completed in 1999 and is used by the department to make GWUDISW determinations, it was inadvertently not adopted when the department developed the capacity development requirements in 1999.

The proposed amendment to (4) is necessary to clarify the definition of "person." Senate Bill 147 modified the statute and this amendment is necessary to keep the rules parallel with the statute.

The proposed amendment to (5) is necessary to clarify the definition of a "public water supply system" or "PWS." Senate

Bill 147 modified the statute, and this amendment is necessary to keep the rules parallel with the statute.

The proposed amendment to (6) is to clarify the definition of "state." This amendment is necessary to retain consistency within the rules.

17.38.203 MAXIMUM INORGANIC CHEMICAL CONTAMINANT LEVELS

(1) The board hereby adopts and incorporates by reference:

(a) 40 CFR 141.11, and 141.62(b), and 141.65, which set forth maximum contaminant levels for inorganic contaminants, except that 40 CFR 141.62(b)(16) is modified to read, "(16) Arsenic 0.010"; and

(b) 40 CFR 141.65, which sets forth maximum residual disinfectant levels; and

(c) 40 CFR 141.80(c)(1) and 40 CFR 141.80(c)(2), which set forth the action levels for lead and copper.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: These proposed amendments are necessary to update the rule to indicate the new arsenic maximum contaminant level (MCL) of 10 parts per billion. Although the new EPA standard will not take effect until January 2006, the PWS rules are being modified to include the standard so that systems can monitor now to determine what steps may be needed in 2006 to come into compliance. The Board wishes to further clarify that requirement by adopting an arsenic MCL of 0.010 mg/L. The USEPA intends to re-publish the arsenic MCL as 0.010 mg/L in order to remove doubt as to the actual compliance standard due to standard scientific rounding procedures. These proposed amendments are also necessary to allow the department to enforce the public water supply laws and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana legislature has been for state agencies to retain primacy over environmental and public health programs.

17.38.206 MAXIMUM RADIOLOGICAL CONTAMINANT

(1) The board hereby adopts and incorporates by reference 40 CFR 141.15, and 141.16, and 141.66(b), (c), (d), (e), and (f), which set forth maximum contaminant levels for radiological contaminants.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: This proposed amendment is necessary to update the rule to indicate the new radiological maximum contaminant level requirements. The existing maximum contaminant levels

(MCLs) for radiological contaminants were not changed, but monitoring requirements were increased. Also, a new MCL for uranium was established. Uranium was not previously regulated. This proposed amendment is also necessary to allow the department to enforce the public water supply laws and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana legislature has been for state agencies to retain primacy over environmental and public health programs.

17.38.208 TREATMENT REQUIREMENTS (1) through (3) remain the same.

(4) The board hereby adopts and incorporates by reference the following:

(a) 40 CFR 141.43(a) and (d), which set forth prohibition on use of lead pipes, solder, and flux;

(a) through (d) remain the same, but are renumbered (b) through (e).

(f) 40 CFR 141.66(g), which sets forth BATs for radionuclides;

(g) 40 CFR 141.76(a) and (c), which set forth recycle provisions;

(e) through (m) remain the same, but are renumbered (h) through (p).

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to (4)(a) is necessary to adopt by reference the federal requirements for the prohibition on the use of lead pipes, solder, and flux. These requirements are designed to protect the system users from exposure to sources of lead in the distribution system and service connections. Because the public water supply laws and rules do not regulate "service connections", the Board withheld adoption of this rule until the Montana Building Codes Bureau adopted plumbing codes in 2001 that met these requirements. This proposed amendment is also necessary to allow the department to enforce the public water supply laws and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana legislature has been for state agencies to retain primacy over environmental and public health programs.

The proposed amendment to (4)(f) is necessary to adopt by reference the federal Best Available Treatment (BATs) for radionuclides. EPA established BATs to identify treatment methods that would effectively remove radiological contaminants from drinking water. This proposed amendment is

also necessary to allow the department to enforce the public water supply laws and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana legislature has been for state agencies to retain primacy over environmental and public health programs.

The proposed amendment to (4)(g) is necessary to adopt by reference the federal requirements that contain the recycle provisions for treatment. These requirements are designed to protect the system and users from concentrated contaminants being reintroduced into the treatment chain. This proposed amendment is also necessary to allow the department to enforce the public water supply laws and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana legislature has been for state agencies to retain primacy over environmental and public health programs.

17.38.216 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

(1) through (2) remain the same.

(3) The board hereby adopts and incorporates by reference the following monitoring and analytical requirements:

(a) 40 CFR 141.23, which sets forth sampling and analytical method requirements for inorganic chemicals except that 141.23(i) is replaced with the following:

(i) Compliance with 40 CFR 141.11 or 141.62(b) (as appropriate) shall be determined based on the analytical result(s) obtained at each sampling point.

(A) For systems monitoring more than once per year, compliance with the maximum contaminant levels, as described in 40 CFR 141.11 or 141.62(b), for fluoride, asbestos, barium, cadmium, chromium, mercury, selenium, antimony, beryllium, cyanide, nickel, thallium, or arsenic is determined by a running annual average at any sampling point.

(B) For systems monitoring annually or less frequently for fluoride, asbestos, barium, cadmium, chromium, mercury, selenium, antimony, beryllium, cyanide, nickel, thallium, or arsenic whose sample result(s) exceed(s) a maximum contaminant level, as described in 40 CFR 141.11 or 141.62(b), must begin quarterly sampling. The system will not be considered in violation of the maximum contaminant level until it has completed one year of quarterly sampling.

(C) If any sample result will cause the running annual average to exceed the maximum contaminant level at the sampling point, the system will be considered out of compliance with the maximum contaminant level immediately.

(D) If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected.

(E) If any sample result is less than the detection limit, zero will be used to calculate the annual average.

(3)(b) through (6) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to (3)(a) is necessary to clarify the process by which inorganic maximum contaminant level (MCL) compliance determinations are made pursuant to the standard as described in 40 CFR 141.23(i). The department proposed changes to the language in 40 CFR 141.23(i) will allow the state to adopt the USEPA intended compliance determination process for inorganic contaminants versus the published process. The proposed amendment will base compliance determinations on a running annual average versus a one-time exceedance causing a MCL violation, which will make it easier for the systems to comply with MCLs. Although the process proposed by amendment is less stringent than the published federal requirement, it is the USEPA intended process and is supported by 66 FR 6976, 7032 (January 22, 2001), which clarifies that the MCL determination process for inorganic contaminants is as described in the Board's proposed rule change.

17.38.229 CHLORINATION DISINFECTION (1) Full time ~~ehlorination~~ disinfection with chlorine is mandatory where the source of water is from lakes, reservoirs, or streams, or ground water sources under the direct influence of surface water.

(2) Full time ~~ehlorination~~ disinfection of the water supply is mandatory whenever the water may be exposed to a potential source of contamination including, but not limited to:

- (a) losses of positive pressure within the system;i
- (b) unprotected or poorly protected ground water sources;i
- (c) the introduction of chemicals or gases for treatment;i or
- (d) substandard distribution, pumping or storage facilities.

(3) Full time ~~ehlorination~~ disinfection of the water in a ground water supply system ~~must be employed~~ is mandatory whenever the record of bacteriological tests of the system does not indicate a safe water under the criteria listed in ARM 17.38.207 and 17.38.215.

(4) Methods of full time disinfection must be reviewed and approved by the department prior to the installation or use of any form of treatment.

~~(4)~~ (5) The residual disinfectant concentration measured as free chlorine, total chlorine, combined chlorine, ~~or~~ chlorine dioxide, or other department approved disinfectant(s), in the distribution system of a ground water supply system required by the department to use continuous disinfection must not be less than 0.2mg/l using the DPD method or 0.1mg/l using the amperometric titration method. A heterotrophic bacteria concentration in water in the distribution system less than or equal to 500 per milliliter, measured as heterotrophic plate count (HPC), is an acceptable substitute for disinfectant residual for purposes of determining compliance with this rule.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to (1), (2) and (3) are necessary to clarify the requirements for "disinfection" as opposed to "chlorination." Where "chlorination" describes one specific disinfection process type, the department wishes to be able to approve alternative disinfection processes when appropriate. Chlorination will still be required for surface water treatment requirements described in (1).

The proposed amendment to (4) is necessary to clarify the need for department review and approval prior to the installation and use of any form of treatment.

The proposed amendment to (5) is necessary to address required residual disinfectant concentration levels for department allowed disinfectants.

17.38.234 TESTING AND SAMPLING RECORDS AND REPORTING REQUIREMENTS (1) and (2) remain the same.

(3) Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

(a) through (d) remain the same.

(e) 40 CFR 141.76(b) and (d), which set forth reporting and recordkeeping requirements for lead and copper;

(e) through (g) remain the same, but are renumbered (f) through (h).

(4) through (8) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to (6)(e) is necessary to adopt by reference the federal reporting and recordkeeping requirements for the recycle provisions, which are designed to ensure that the operational records for both public water supply and sewage systems are available for inspection during sanitary surveys or other system inspections, and to ensure that the department receives the required information for compliance determination purposes. The proposed amendment is also necessary to allow the department to enforce the public water supply statutes and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana legislature has been for state agencies to retain primacy over environmental and public health programs.

17.38.239 PUBLIC NOTIFICATION FOR COMMUNITY AND NON-COMMUNITY SUPPLIES (1) The board hereby adopts and incorporates by reference ~~the following~~ 40 CFR Part 141, subpart Q, which sets forth public notification requirements for drinking water violations ~~+~~.

~~(a) 40 CFR 141.32, which sets forth public notification requirements;~~

~~(b) 40 CFR 141.35(d), which sets forth public notification requirements for unregulated chemicals; and~~

~~(c) 40 CFR 141.85, which sets forth public education and supplemental monitoring requirements.~~

(2) remains the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to (1) is necessary to update the rule to adopt the public notification requirements under the new 40 CFR Part 141, subpart Q, Public Notification of Drinking Water Violations. The revisions to the public notification requirements place all required public notices under the new 40 CFR Part 141, subpart Q and allow for more state flexibility in implementing requirements for notification of the public regarding violations. This proposed amendment is necessary to allow the department to enforce the public water supply laws and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana legislature has been for state agencies to retain primacy over environmental and public health programs.

17.38.249 DESIGNATED CONTACT PERSON (1) The ~~supplier owner~~ of a community or non-transient non-community public water supply or wastewater treatment system shall retain a certified operator, as defined in Title 37, chapter 42, MCA, to perform monitoring and reporting in accordance with the

requirements of this subchapter. The certified operator must be in responsible charge of the public water supply or wastewater treatment system in accordance with Title 37, chapter 42, MCA.

(2) The ~~supplier owner~~ of a public water for community systems supply or wastewater treatment system shall ~~designate~~ provide, no later than 30 days after the ~~effective date of this rule~~, a issuance of a written request by the department, the name, address, and telephone number of a designated person who shall be responsible for contact and communications with the department in matters relating to system alteration, extension and construction, monitoring and sampling, maintenance, operation, record keeping, notification, and reporting. For a community or a non-transient non-community public water supply or wastewater treatment system, This this person must be certified in accordance with the requirements of Title 37, chapter 42, MCA.

(3) The ~~supplier owner~~ of a public water for non-community water systems shall ~~designate and notify the department of his designee~~ no later than 30 days after the ~~designation~~ supply or wastewater treatment system shall report any change in assigned responsibilities or designated persons to the department within 30 days after the change.

(4) ~~Any change in assigned responsibilities or designated persons must be promptly reported to communication or notice made by the department to a person designated under (2) is deemed to be adequate communication or notice to the owner of the public water supply or wastewater treatment system.~~

(5) The department hereby adopts and incorporates by reference Title 37, chapter 42, MCA, which establishes requirements for operators of public water supply systems and wastewater treatment plants. A copy may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to (1), (2), (3), (4) and (5) are necessary to adopt requirements and penalties under the public water supply statutes and rules for certification of wastewater operators. The Public Water Supply program regulates public water supply and wastewater systems; however, only violations for not meeting the certified operator requirements for public water supply systems are regulated under the public water supply statutes and rules. Wastewater systems are required to have certified operators; however, administrative or judicial penalties against wastewater systems are not available in the wastewater operator certification statutes and rules. The addition of

wastewater systems to this rule will allow the department to establish requirements and penalties for certified wastewater operator violations in public wastewater systems under the public water supply statutes and rules.

Further proposed amendments in (2), (3) and (4) are necessary to clarify the duties, deadlines, and responsibilities for owners and contact persons of public water supply and wastewater systems. These clarifications are necessary to maintain the integrity of the Certified Operator and Public Water Supply programs.

17.38.302 INCORPORATION BY REFERENCE (1) The board hereby adopts and incorporates by reference the following publications:

(a) through (2) remain the same.

(3) Backflow prevention assemblies or devices not identified in the publications listed above may be approved by the department if the person demonstrates to the satisfaction of the department that strict adherence to this rule is not necessary to protect public health and the quality of state waters.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to (1) is necessary for general housekeeping clarification.

The proposed adoption of (3) is necessary to allow the department to be able to approve alternate type devices or assemblies where appropriate. The existing rule does not allow for other than the specified devices or assemblies.

6. The proposed new rule provides as follows:

NEW RULE I GROUND WATER UNDER THE DIRECT INFLUENCE OF SURFACE WATER DETERMINATIONS (1) The board hereby adopts and incorporates by reference the Department of Environmental Quality Circular PWS-5, Ground Water Under the Direct Influence of Surface Water, 2002 edition, which sets forth the standards for making ground water under the direct influence of surface water determinations.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The new Department of Environmental Quality Circular PWS-5, Ground Water Under the Direct Influence of Surface Water (GWUDISW), 2002 edition (Circular PWS-5),

establishes a process under which a final determination is made by the department as to whether a ground water source is directly influenced by surface water. Any system found to be directly influenced by surface water must meet all the applicable treatment requirements of a surface water source as defined by 40 CFR 141.70 and ARM 17.38.201, et seq. In drafting Circular PWS-5, the department used existing GWUDISW Policies dated March 27, 1998, December 23, 1996, April 22, 1996, April 11, 1995, and November 29, 1994. All policies were based on information taken from the United States Environmental Protection Agency (EPA) guidance documents.

Although Circular PWS-5 was originally completed in 1999, it was inadvertently not adopted when the department instituted the capacity development requirements in 1999. The department currently uses Circular PWS-5 to make GWUDISW determinations using ARM 17.38.219, Special Samples, as the authority to require its use.

Section 1.0 Purpose

The purpose of Circular PWS-5 is to protect public health by ensuring that source waters are monitored and treated as required under federal and state public water supply laws and rules. In order to protect the public health and meet the federal requirements under the state's primacy agreement with the EPA, each specific source in the state must undergo a process that determines whether a source is ground water, surface water, or ground water under the direct influence of surface water. Each of these source types has a different monitoring and treatment requirement, with GWUDISW being treated as surface water. Circular PWS-5 outlines the process in which a final determination will be made. The adoption of Circular PWS-5 is necessary to allow the department to enforce the public water supply laws and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana legislature has been for state agencies to retain primacy over environmental and public health programs.

Sections 2.0 and 2.1 Surface Water and Ground Water Defined

Because Circular PWS-5 outlines the process in which a final GWUDISW determination will be made, it is necessary to define "surface water" and "ground water" as related to this process.

Sections 3.0 - 3.4 Preliminary Assessment

These sections contain information on the GWUDISW Preliminary Assessment (PA). Under federal rules, it is necessary for "every source" to undergo the GWUDISW determination process. Approximately 90% of the public water supply sources in the state of Montana are ground water. The PA allows the department to make initial GWUDISW determinations based on "risk" factors using existing data. Points are given based on particular "risks." The PA allows a vast majority of the sources in the state of Montana to be classified as ground water without expending large amounts of money on increased sampling efforts. These sections include the PA form, as an attachment, which is used as the starting point to evaluate all sources for public water supply systems. Directions for completing and scoring the PA form are also included.

Sections 4.0, 4.1 and 4.2 Hydrogeological Assessment

These sections contain information on the Hydrogeological Assessment (HA), the HA evaluation process, and resources used during an HA. Under federal and state laws and rules, a system that fails the PA process is required to conduct "further assessment," which may include an HA. The HA may be able to determine whether a source is under the direct influence of surface water by evaluating geological and hydrological conditions associated with the source, using a person with specific geological or hydrogeological experience to conduct the investigation. A determination from the HA of "ground water" would be the final determination. Any other result will trigger additional analysis requirements.

Sections 5.0 and 5.1 Water Quality Assessment

These sections contain information on the Water Quality Assessment (WQA) process and how to determine if a hydraulic connection exists between ground water and surface water by monitoring the physical properties of the water in question against the physical properties of the surface water over an extended period of time. A determination from the WQA that a hydraulic connection does not exist would be the final determination that the source is "ground water." Any other result will trigger additional analysis requirements. Instructions and sample forms are included for conducting a WQA and record keeping.

Sections 6.0 and 6.1 Microscopic Particulate Analysis

These sections contain information on the Microscopic Particulate Analysis (MPA) sampling method for surface water indicators. The MPA is the final determination process for sources that have not been classified as ground water under the above-referenced methods. The MPA sampling method looks for surface water indicators, such as insects, pieces of plants, Giardia Lamblia cysts, etc., to determine whether a source is directly influenced by surface water. The results are given a score based on federal guidelines that assign a "risk factor" to the source. This risk factor is then used to make a final determination whether the source is "ground water" or "surface water." These sections also include general information on risk scoring and sample collection for reference.

7. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us and must be received no later than 5:00 p.m., May 8, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

8. Kelly O'Sullivan, attorney for the Board, has been designated to preside over and conduct the hearing.

9. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board

Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, March 31, 2003.